



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/425,743	10/22/1999	ED VAES	300P4	9958

7590

03/21/2002

MARK A KOCH
866 MAIN STREET EAST
HAMILTON, L8M1L9
CANADA

EXAMINER

GRAHAM, GARY K

ART UNIT

PAPER NUMBER

1744

DATE MAILED: 03/21/2002

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/425,743

Applicant(s)

VAES, ED

Examiner

Gary K Graham

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-5, 13, 18-20, 28, 29 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 3, 13, 18 and 28, defining that the transition section is dimensioned such that the offset distance is one half to three times a forefinger thickness appears indefinite. A forefinger and its associated thickness are not part of the claimed brush handle. Thus, it appears improper to try to define the handle by the forefinger. Absent a forefinger, what does such limitation mean? Further, no particular forefinger has been defined. Absent a particular forefinger and its size, such a limitation has no clear meaning. It appears applicant should claim the actual size and not some size as compared to other unrelated and undefined structure.

With respect to claims 5, 20 and 30, defining that the angle theta and the transition section length are selected such that... appears indefinite. It appears improper to attempt to define the brush handle by the hand of a user, when such a hand is not a part of the handle. Absent a particular hand, what does such limitation mean?

Art Unit: 1744

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-13, 16-36 and 39 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Parker et al '618.

The patent to Parker discloses the invention as is claimed. Note the figures which show a paintbrush with an offset handle as is claimed by applicant.

With respect to claim 3, 13, 18 and 28 such defines no particular structure, at least none not shown by Parker. The relationship to an undefined forefinger has no specific meaning.

With respect to claim 4, 19 and 29 it appears the angle shown by Parker is as claimed.

With respect to claims 5, 20 and 30, such defines no particular structure, at least none not shown by Parker. Defining that the angle and the transition section length is selected such that there is just enough relief for the web of the hand for the forefinger phalanges and metacarpal bones to align defines no particular structure. Absent a particular forefinger and web, such does not define anything other than what is shown by Parker.

With respect to claims 8, 9, 33, 34 such limitations do not define any particular structure, at least none not shown by Parker. It appears either hand of a user could grasp the handle of Parker. Nothing would prevent such.

Art Unit: 1744

Claims 1-3, 5-18, 21-28 and 30-39 are rejected under 35 U.S.C. 102(a) as being anticipated by Ducharme '421.

The patent to Ducharme discloses the invention as is claimed. Note the figures 1 and 2 which show a brush with an offset handle as is claimed by applicant to be held in a manner as is suggested by Applicant. While applicant terms his device a "paint" brush, such defines no particular structure not defined by Ducharme.

With respect to claim 3, 13, 18 and 28 such defines no particular structure, at least none not shown by Ducharme. The relationship to an undefined forefinger has no specific meaning.

With respect to claims 5, 20 and 30, such defines no particular structure, at least none not shown by Ducharme. Defining that the angle and the transition section length is selected such that there is just enough relief for the web of the hand for the forefinger phalanges and metacarpal bones to align defines no particular structure. Absent a particular forefinger and web, such does not define anything other than what is shown by Ducharme.

With respect to claims 8, 9, 33, 34 such limitations do not define any particular structure, at least none not shown by Ducharme. It appears either hand of a user could grasp the handle of Ducharme. Nothing would prevent such.

With respect to claims 14 and 37, note figure 2 which shows an edge lying between the head section and the transition section. Such edge will act as a pivot, at least as far as defined, to keep the bristles elevated above a surface the brush is to be rested upon.

Art Unit: 1744

With respect to claims 15 and 38, it appears, base on the use of a single material for the entire handle and the dimensions shown in figure 2, that the brush when rested upon a flat surface will lie such that the bristles remain elevated above such surface.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 19, 20 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ducharme '421.

The patent to Ducharme discloses all of the above recited subject matter, with the exception of the angle being in the range of 30-60 degrees.

While Ducharme discloses the angle theta being between 0 and 20 degrees, to optimize such angle to provide maximum comfort or control of the brush would have been obvious.

Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. Since Ducharme does disclose an offset handle brush, to optimize the angle of offset does not appear inventive but merely that which one of skill in the art would find obvious by routine experimentation.

Art Unit: 1744

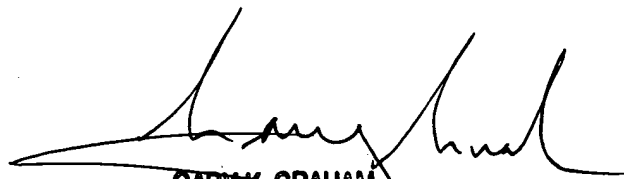
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K Graham whose telephone number is 703-308-1270. The examiner can normally be reached on Tuesday to Friday (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on 703-308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7719 for regular communications and 703-305-7719 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-7719.


GARY K. GRAHAM
PRIMARY EXAMINER
GROUP 1,700

GKG
March 11, 2002